

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



July 25, 2002

TO: ALL PARTIES OF RECORD IN APPLICATION 01-06-041

Decision 02-07-031 is being mailed without the Dissent of President Loretta M. Lynch. The Dissent will be mailed separately.

Very truly yours,

/s/ CARL K. OSHIRO  
Carl K. Oshiro, Interim Chief  
Administrative Law Judge

CKO:eap

Decision 02-07-031 July 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Sierra  
Pacific Power Company (U903 E) for an  
Order Authorizing an Immediate Interim  
Rate Increase, subject to Refund and for  
Consideration of a Rate Stabilization Plan.

Application 01-06-041  
(Filed June 29, 2001)

David M. Norris, Attorney at Law, for  
applicant.

John M. Chamberlain, Attorney at Law, for  
Office of Ratepayer Advocates.

Robert Finkelstein, Attorney at Law, for  
The Utility Reform Network.

## **OPINION GRANTING INTERIM RATE INCREASE OF 2¢/kWh**

### **A. Summary**

Sierra Pacific Power Company (Sierra) seeks a \$10.2 million, 2-cent per-kWh rate increase for all of Sierra's retail customers in California. Sierra states that its forecasted 2002 rate of return for California operations is - 3.42%. Sierra requests that the interim rate increase be implemented subject to refund, pending a final decision on Sierra's Rate Stabilization Plan.

Sierra asserts that it is preparing a detailed Rate Stabilization Plan similar to those filed by Southern California Edison Company (Edison) and Pacific Gas and Electric Company (PG&E) in applications (A.) 00-11-038 and A.00-11-056. The full plan will be filed in April 2002, and will include a complete general rate case (GRC), a proposal to reinstitute the energy cost adjustment clause (ECAC), a proposal pertaining to the termination of the 10% rate reduction mandated by Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854), disposition of the Transition Cost Balancing Account (TCBA) and implementation cost recovery, a proposal to reinstitute the California Alternative Rates for Energy (CARE) balancing account in 2002, and a modification of the distribution performance ratemaking mechanism (PBR).

Sierra, headquartered in Reno, Nevada, provides retail electric service to approximately 310,000 customers, of whom 44,500 are located in eastern California. All of Sierra's remaining customers are in northern Nevada. Sierra's California service territory extends from Portola in the north to Markleeville in the south, with most customers located in and around the Lake Tahoe Basin. Sierra's northern Nevada control area includes its California service territory and is not under the operational control of the California Independent System

Operator (ISO). Virtually all of the Sierra's generation assets are located in northern Nevada and none of those assets have been sold.

In Decision (D.) 97-12-093 the Commission addressed the implementation of AB 1890 to Sierra's California service territory. Pursuant to Pub. Util. Code § 368,<sup>1</sup> Sierra was ordered to freeze rates at levels in effect as of June 10, 1996, provided that rates for residential and small commercial customers were reduced by at least 10% for 1998 through 2002. The company was also ordered to unbundle rates and provide direct access to its California customers. The Commission acknowledged that the ISO found that it would be impractical to take operational control of Sierra's transmission assets in California. AB 1890 required that no California electrical corporation can be authorized to collect a competition transition charge (CTC) unless it commits control of its transmission facilities to the ISO. The Commission determined that operating agreements between the ISO and Sierra to allow customers to have the opportunity to choose direct access and to allow energy service providers comparable access to transmission facilities were sufficient for this purpose. The Commission further ordered that the power exchange (PX) price would serve as the market proxy from which the CTC would be measured until such time as a different market benchmark was established for Sierra's control area. As a result of D.97-12-093, Sierra established a TCBA in which the company tracked its actual cost of providing generation service to California customers against the PX price.

After the issuance of D.97-12-093, Sierra contends that fuel and purchased power (F&PP) costs for the company escalated to unprecedented levels. With its

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise noted.

rates frozen in California and Nevada, it says the company came perilously close to financial insolvency early in 2001. On February 23, 2001, the Public Utilities Commission of Nevada (PUCN) granted Sierra emergency rate relief which increased rates to Nevada customers immediately by 17.7%. This coupled with PUCN-approved, monthly F&PP increases, between November 1, 2000 and April 1, 2001, have resulted in an overall rate increase to Nevada customers of 32.5%.

The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) protested the instant application, but only ORA participated in the evidentiary hearing. On September 27, 2001 the presiding administrative law judge (ALJ) ordered Sierra to amend its application to address whether the AB 1890 rate freeze had ended for Sierra. (See D.01-01-018 – a rate increase in derogation of the rate freeze can be implemented only by a showing of extraordinary circumstances applicable to the entire utility.) Sierra filed its amendment on October 26, 2001. Public hearing was held before ALJ Barnett and the matter submitted on January 25, 2002.

## **B. Results of Operations**

Sierra presented its forecasted results of operations study for California for the 12 months ending December 31, 2001. The study shows that the forecasted rate of return (ROR) is – 3.42%. An increase of \$16.7 million is needed for Sierra to achieve its authorized ROR for 2001 of 9.01%. F&PP costs are projected to increase 39% from 2000 levels. The following figures illustrate magnitude of the undercollections in the TCBA caused by the unprecedented increase in F&PP costs. As of March 31, 2001, Sierra's net TCBA undercollected balance was \$16,815,819. The undercollected balance for December 31, 2001 is projected to be \$29,970,000. The proposed 2-cent per-kWh interim rate increase would result in

a revenue increase of \$10.2 million or a 26% increase to customers overall. Sierra believes that even if this amount is granted, it's rates will still be 47-53% lower than those of California's major utilities.

Sierra submitted its California jurisdictional results of operations forecast for both 2001 and 2002. Year 2001 is based on ten months actual expenses. It shows that under current rates its California jurisdictional rate of return is negative 5.84%; should its requested 2¢/kWh increase be granted its rate of return would be 1.61%. This is shown in Table 1.

TABLE 1  
SIERRA PACIFIC POWER COMPANY  
SUMMARY RESULTS OF OPERATIONS - CALIFORNIA ELECTRIC - TOTAL  
FORECASTED TWELVE MONTHS ENDED DECEMBER 31, 2001

A.01-06-041  
LATE-FILED  
EXHIBIT NO. 16  
PAGE 1 OF 2

LN #	(A) DESCRIPTION	(B) FORECAST (1) RESULTS OF OPERATIONS	(C) A.01-06-41 INTERIM REVENUE REQUEST	(D) FORECAST AFTER INTERIM REVENUE REQUEST
1	OPERATING REVENUES			
2	SALES REVENUE	\$ 40,087	\$ 10,199	\$ 50,286
3	OTHER OPERATING REVENUE	366	-	366
4	REVENUE CREDITS	655	-	655
5	TOTAL OPERATING REVENUES	41,108	10,199	51,307
6				
7	OPERATING EXPENSES			
8	FUEL, & PURCH POWER O&M (1)	35,116	-	35,116
9	OTHER O&M EXPENSE	8,734	-	8,734
10	DEPR & AMORT EXPENSE	4,442	-	4,442
11	TAXES OTHER THAN INCOME	2,143	-	2,143
12	DEFERRED INCOME TAXES	(646)	-	(646)
13	AMORTIZATION OF ITC	(147)	-	(147)
14	CHARGES EQUIVALENT TO ITC	-	-	-
15	FEDERAL INCOME TAX	(4,074)	3,569	(505)
16	CALIFORNIA CORPORATION TAX	735	-	735
17	TOTAL OPERATING EXPENSES	46,302	3,569	49,871
18				
19	OPERATING INCOME	\$ (5,194)	\$ 6,630	\$ 1,436
20				
21				
22	GROSS PLANT IN SERVICE	\$ 168,099	\$ 2	\$ 168,101
23	ACCUM PROV FOR DEPR & AMORT	64,720	-	64,720
24	NET PLANT IN SERVICE	103,379	2	103,381
25				
26	ADDITIONS TO NET PLANT	3,139	55	3,194
27				
28	DEDUCTIONS FROM NET PLANT	17,629	12	17,641
29	RATE BASE	\$ 88,889	\$ 45	\$ 88,934
30				
31				
32	RATE OF RETURN	-5.84%		1.61%
33				
34	(1) Changes to Forecasted 2001 Results:			
35	Dep & Amortization: Update and removal of merger costs & goodwill.			
36	Fuel & P.Power Exp: Updated projection - 10 mos actual. See below.			
37	All Other Items: Updated projections.			
38				
39				
40	Fuel & Purchased Power:			
41	Costs - Total	\$ 638,408	\$ 525,980	\$ (112,428)
42	Output	9,544,832	9,448,066	(96,766)
43	Average (\$/Mwh)	\$ 66.89	\$ 55.67	\$ (11.21)
44				
45	California - %	5.5%	5.6%	
46	Costs - California	\$ 35,116	\$ 29,222	\$ (5,894)

Forecast 2002 is shown in Table 2.

TABLE 2  
SIERRA PACIFIC POWER COMPANY  
SUMMARY RESULTS OF OPERATIONS - CALIFORNIA ELECTRIC - TOTAL  
FORECASTED TWELVE MONTHS ENDED DECEMBER 31, 2002

A.01-06-041  
LATE-FILED  
EXHIBIT NO. 16  
PAGE 2 OF 2

LN #	(A) DESCRIPTION	(B) FORECAST RESULTS OF OPERATIONS	(C) A.01-06-41 INTERIM REVENUE REQUEST	(D) FORECAST AFTER INTERIM REVENUE REQUEST
1	OPERATING REVENUES			
2	SALES REVENUE	\$ 40,816	\$ 10,199	\$ 51,015
3	OTHER OPERATING REVENUE	389	-	389
4	REVENUE CREDITS	700	-	700
5	TOTAL OPERATING REVENUES	41,905	10,199	52,104
6				
7	OPERATING EXPENSES			
8	FUEL, & PURCH POWER O&M (1)	31,380	-	31,380
9	OTHER O&M EXPENSE	9,260	-	9,260
10	DEPR & AMORT EXPENSE	5,234	-	5,234
11	TAXES OTHER THAN INCOME	2,235	-	2,235
12	DEFERRED INCOME TAXES	(879)	-	(879)
13	AMORTIZATION OF ITC	(147)	-	(147)
14	CHARGES EQUIVALENT TO ITC	-	-	-
15	FEDERAL INCOME TAX	(2,872)	3,570	697
16	CALIFORNIA CORPORATION TAX	750	-	750
17	TOTAL OPERATING EXPENSES	44,960	3,570	48,530
18				
19	OPERATING INCOME	\$ (3,055)	\$ 6,629	\$ 3,574
20				
21				
22	GROSS PLANT IN SERVICE	\$ 174,046	\$ 3	174,049
23	ACCUM PROV FOR DEPR & AMORT	69,289	-	69,289
24	NET PLANT IN SERVICE	104,757	3	104,760
25				
26	ADDITIONS TO NET PLANT	2,839	53	2,892
27				
28	DEDUCTIONS FROM NET PLANT	18,174	12	18,186
29	RATE BASE	\$ 89,422	\$ 44	\$ 89,466
30				
31				
32	RATE OF RETURN	-3.42%		4.00%
33				
34	(1) Fuel & Purchased Power:			
35	Costs - Total	\$ 560,305		
36	Output	9,943,548		
37	Average (\$/Mwh)	\$ 56.35		
38				
39	California - %	5.6%		
40	Costs - California	\$ 31,380		

Sierra states that it and its parent company, Sierra Pacific Resources (Resources), have experienced severe financial losses for 2000 and 2001. Sierra's senior secured bond rating dropped to BBB+ and unsecured bond and preferred stock ratings were reduced to BB+. Resources reported a loss of \$0.23 per share for the fourth quarter of 2000 and a loss of \$0.51 per share for the year 2000. Sierra asserts that if rate relief is delayed until this Commission can decide all of the issues to be presented in the company's Rate Stabilization Plan, its financial situation will continue to deteriorate and its California customers will not receive appropriate price signals.

Because of lower fuel and purchased power expenses in 2002, Sierra forecasts a negative 3.42% ROR under current rates and a positive 4.0% ROR under proposed rates. In D.00-12-062 in A.00-05-018, we approved a rate of return for Sierra of 9.01%. ORA does not dispute these results of operation.

In our opinion, whether considering a negative 5.84% rate of return or a negative 3.42% rate of return, Sierra's California operations are in dire financial straights, which satisfy the requirements of an interim rate increase, subject to refund.

The action of the Public Utilities Commission of Nevada (PUCN) has a direct bearing on this application. In November 2000, the PUCN increased Sierra's Nevada rates by 12.5%; for early 2001, the PUCN increased rates by an additional 17.7%. With other adjustments, the total rate increase authorized by the PUCN between November 2000 and April 1, 2001 was 32.5%. Sierra believes the action of the PUCN kept it out of bankruptcy.

### **C. The Rate Freeze**

Section 368 of the Public Utilities Code established a rate freeze that set retail rates for customers equal to those in effect on June 10, 1996, less 10% for residential and small commercial customers. These rate levels were to remain in

effect until “the earlier of March 31, 2002, or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered.”

Sierra has asserted, and offered evidence, that its rate freeze has ended because it has recovered all of its transition costs, the uneconomic portion of its investment in generation-related assets.

“Transition costs’ means the costs, and categories of costs, of an electrical corporation for generation-related regulatory assets, nuclear settlements, and power purchase contracts, ..., that were being collected in commission-approved rates on December 20, 1995 and that may become uneconomic as a result of a competitive generation market in that those costs may not be recoverable in market prices in a competitive market, ...”  
Section 840(f).

To constitute “transition costs,” a utility’s generation-related assets and obligations must have been a component of Commission-approved rates on December 20, 1995, and must be an asset or obligation that may become uneconomic or unrecoverable in a competitive market.

In D.97-12-093, the Commission ordered Sierra to create and maintain a TCBA to track transition costs and transition cost recovery. Sierra established its TCBA in January 1998. For each month thereafter, Sierra recorded the difference between the generation component of its rates and the PX price for the same time period. The undercollection in the TCBA as of December 31, 2001 exceeds \$27 million. Sierra, in this proceeding, is not seeking recovery of the negative TCBA balance.

Section 367(b) provides that transition costs are based on a calculation that nets the negative value of all “above market utility-owned generation related assets against the positive value of all below market utility-owned generation

assets.” Valuation is to occur no later than December 31, 2001 and shall be based on appraisal, sale, or other divestiture. Section 367 assumes that the market value ascribed to the utility’s generation assets will be higher than the net book value (original cost less depreciation) and that the difference between market value and net book value would be recovered during the rate freeze.

In Sierra’s case, there are no transition costs to be recovered. Sierra has retained all of its generation-related assets and will retain those assets for some time. Sierra’s position is that, under the circumstances reflected in this proceeding, the market value of its generation assets is equivalent to their net book value consistent with traditional cost of service ratemaking. ORA does not dispute this valuation. We agree that this approach is consistent with the guidance provided by ABX1 6 (Stats. 2001, First Extraordinary Session, Ch. 2).

When this proceeding began, to obtain rate relief Sierra had to show that for it the rate freeze had ended. To this purpose Sierra produced evidence that it no longer had transition costs to recover and, therefore, Sierra’s rate freeze was over. However, we need not resolve this issue as the passage of time needed to hear this application and reach a decision has taken us past the March 31, 2002 date for termination of the rate freeze. By the terms of the statute the rate levels in effect as of June 10, 1996 expire no later than March 31, 2002. (We note that the 10% rate reduction for residential and small commercial customers remains in effect until the end of 2002.) ORA recognizes the March 31, 2002 statutory end of the rate freeze.

#### **D. Interim Relief**

ORA opposes interim relief because Sierra, on a company-wide basis, is able to continue to procure and deliver power to its customers. ORA argues that it would be deceptive to view Sierra’s California operations in isolation when

assessing its request for interim rate relief, because it is incumbent upon Sierra to demonstrate a financial emergency so severe that its immediate ability to meet its minimum obligations is jeopardized. As a utility that serves approximately 95% of its business outside of California, in addition to being part of a larger corporate family under a multi-billion dollar holding company, Sierra's financial resources lie almost entirely outside of California. ORA says the record shows that Sierra can continue to meet its California obligations until the next general rate case is decided. ORA asserts that the law guiding Commission decisions on interim rate relief must include an assessment of parent company and total utility well being.

During the rate freeze, ORA's argument had merit and we came to similar conclusions for Edison and PG&E. (Re *Southern California Edison*, D.01-01-018 and Re *Pacific Gas and Electric Co.*, D.01-03-082.) But we must now consider Sierra's request after the rate freeze has ended. At this point a different criteria is required; one that is less onerous than the rate freeze criteria. Our standard now is the revenue effect on California operations. A 2001 return of negative 5.84% (based on 10-month actual) and a projected 2002 return of negative 3.42% calls for relief.

Our authority to grant interim rate relief under the circumstances of this proceeding is well established. In *Toward Utility Rate Normalization v. Public Utilities Commission*, 44 Cal. 3d 870, 750 P. 2d 787, 256 Cal. Rptr. 8 (1988), TURN contended that the Commission could not authorize interim relief unless failure to do so would result in a financial emergency or unless the reasonableness of the investment costs covered by the utility's rates is undisputed. The Supreme Court recognized that the Commission has granted interim relief under the standards cited by TURN, but stated:

“From the existence of those two exceptions, however, it does not follow that no other circumstances can justify an interim increase.” 44 Cal. 3d at 875.

The Supreme Court continued:

“The commission’s power to grant interim rate increases was recognized by this court in *City of Los Angeles v. Public Utilities Commission* (1972), 7 Cal. 3d 331, [01 Cal. Rptr. 313, 497 P. 2d 785]. There we annulled a commission order granting a general rate increase to Pacific Telephone but provided that the commission ‘may grant interim rate increases should it find them appropriate while it reconsiders Pacific’s application for rate increase,’ ... It is apparent that the authority delegated to this commission by the Public Utilities Act to award rate relief to a public utility carries with it the incidental and implied power to grant interim relief, if the facts warrant such summary relief.” (*Id.* at p. 878.)

“In the present case, the commission was not faced with an ‘emergency’ in the sense of a threat to the utility’s survival, but the situation was one in which fairness to both the utility and public required immediate action.” 44 Cal. 3d at 879.

In granting a substantial interim rate increase to Edison in 1988, and in response to the contention that Edison had not made a case justifying interim relief, the Commission stated:

“We disagree with these parties and find that several factors in fact support our granting such relief for Edison. None of these factors suggest the existence of an emergency, but all relate to preserving the financial integrity of the utility, minimizing costs incurred by ratepayers, and ensuring rate stability for Edison’s customers. As mentioned previously, however, the existence of a financial emergency is no longer a standard which must be met in granting interim relief.” D.88-05-074, p. 14.

Thus, the utility’s continued viability need not be on the line before interim rate relief may be granted. *Re California Utilities Services, Inc.*, (D.91-02-035.) It is

sufficient “where there is a showing that fairness to both the utility and the public require immediate action. (D.91-02-035 at p. 10, citing *TURN v. PUC* 44 Cal. 3d 870, 879.)

ORA argues that we should look at the financial condition of the overall company beyond the State’s borders in order to assess whether an emergency exists within California. A cross-border examination dissipates the emergency.

ORA believes our holding in *Three Citizens Utilities Co.* ([D.78665] (1971) 72 Cal. P.U.C. 181) is pertinent. In *Three Citizens*, three California water utility subsidiaries of a nationwide parent company (Citizens Utilities Company of Delaware) applied for interim rate increases based on substandard rates of return. Citizens-Delaware was “a nationwide utility which provides gas, electric, telephone, and water services in over 450 communities in the U.S.” (*Id.* at 181.) After noting the three utilities losses, the Commission said “standing alone these figures support immediate rate relief. However, since the applicants are wholly owned subsidiaries of Citizens-Delaware, its overall financial position must be considered.” (*Id.* at 184.) The Commission concluded that Citizens-Delaware could adequately attract debt capital and meet interest obligations, and had a strong equity ratio. Interim relief was denied.

ORA argues that by taking into account the financial position of the out-of-state parent company in *Three Citizens*, the Commission highlighted the difference between ordinary rate cases and requests for interim relief: The utility’s California operations are not determinative of the issue, and allocation between jurisdictions is largely immaterial.

ORA’s standard for granting interim relief is much too severe. Our consideration of the standard applicable to the granting of interim relief has expanded from a need to show an emergency which threatened the utility’s

survival to one which contemplates fairness to both the utility and the public. In this proceeding, the fairness issue is preeminent. We set rates based on California operations, we allocate revenues and expenses based on California operations. We should not change our method of analysis solely because Sierra seeks an interim rate increase while awaiting a hearing on its rate increase application. Certainly if Sierra operated entirely within California and showed a negative rate of return, we would not hesitate to authorize an interim increase subject to refund. Fairness says we should do no less despite Sierra's having a major portion of its operations in Nevada. Sierra's California operations had a negative return in 2001 and forecasts a negative return in 2002 without interim relief. In addition, Nevada customers have experienced a cumulative rate increase of 32.5%. It is not reasonable to expect Nevada ratepayers to continue to subsidize Sierra's operations in California. Sierra filed its general rate case in April 2002. Because we cannot reasonably expect a decision on its rate case until 2003 at the earliest, it is in the public interest to grant an interim rate increase as requested. A 2¢/kWh increase is half of what SCE and PG&E were recently authorized (D.01-01-018 and D.01-03-082) and is reasonable for Sierra. This interim rate increase is granted, subject to refund.

#### **E. Comments on Proposed Decision.**

The proposed decision of ALJ Barnett in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed and have been considered. TURN requests that we state that medical baseline customers are exempt from the surcharge, as we have done in other proceedings, (e.g., D.01-05-064). We have done so.

### **Findings of Fact**

1. Sierra's California operations in 2001 forecast a rate of return of -5.84%.
2. Sierra's California operations in 2002 forecast a rate of return of -3.42%.
3. Sierra's general rate case was filed April 2002 and is not expected to conclude before 2003.
4. Sierra's Nevada customers, who have experienced a cumulative rate increase of 32.5%, should not continue to subsidize Sierra's California customers.
5. An interim rate increase subject to refund of 2¢/kWh (\$10,200,000) is reasonable to raise Sierra's 2002 forecast rate of return to 4%.
6. Because of the extraordinary size of the rate increase, it is reasonable to exempt customers who qualify for special baseline usage allowances for medical reasons, as specified in "special condition" 4 of Sierra's Schedule No. D-1 (Domestic Service).
7. Fairness to the utility and its ratepayers requires an interim rate increase subject to refund.

### **Conclusions of Law**

1. The rate freeze is over for Sierra, consistent with § 368(a).
2. An interim rate increase subject to refund is fair and reasonable under the circumstances of this case.
3. Customers with medical conditions should be exempt from rate increases, as well as CARE customers.
4. This decision should be effective immediately in order to provide Sierra with an opportunity to earn a more reasonable rate of return.

### **INTERIM ORDER**

**IT IS ORDERED** that:

1. Sierra Pacific Power Company (Sierra) shall establish an interim surcharge, subject to refund and adjustment. The interim surcharge shall be applied to electricity rates and shall be applied on an equal-cents-per-kWh basis of 2¢/kWh. Sierra shall file a compliance advice letter to implement this surcharge. The advice letter shall be effective on the date filed, subject to Energy Division determining that it is in compliance with this order.
2. Sierra shall establish a balancing account with customer class-specific sub-accounts to track the interim surcharge revenues.
3. Customers eligible for the California Alternative Rates for Energy program and customers who qualify for special baseline usage allowances for medical reasons are exempt from this surcharge. All other customers, including direct access customers, are subject to this surcharge.
4. This proceeding is closed.

This order is effective today.

Dated July 17, 2002, Francisco, California.

HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

I will file a dissent.

/s/ LORETTA M. LYNCH  
President